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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AMERANTH, INC.

Plaintiff,

v.

PIZZA HUT, INC., PIZZA HUT OF
AMERICA, INC., DOMINO'S PIZZA, LLC,
DOMINO'S PIZZA, INC., PAPA JOHN'S
USA, INC., OPENTABLE, INC.,
GRUBHUB, INC., NETWAITER, LLC and
LAUGHSTUB LLC,

Defendants.

Civil Action No.: **'11CV1810 JLS NLS**

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

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1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its Complaint against defendants Pizza Hut, Inc., Pizza
3 Hut of America, Inc., Domino's Pizza, LLC, Domino's Pizza, Inc., Papa John's USA, Inc.,
4 OpenTable, Inc., GrubHub, Inc., Netwaiter, LLC and LaughStub LLC (collectively,
5 "Defendants"), avers as follows:

6 **PARTIES**

7 1. Plaintiff Ameranth, Inc. ("Ameranth") is a Delaware corporation having a
8 principal place of business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121.
9 Ameranth develops, manufactures and sells, *inter alia*, hospitality industry, entertainment,
10 restaurant and food service information technology solutions under the trademarks 21st
11 Century Communications™, 21st Century Restaurant™, among others, comprising the
12 synchronization and integration of hospitality information and hospitality software
13 applications between fixed, wireless and/or internet applications, including but not limited to
14 computer servers, web servers, databases, affinity/social networking systems, desktop
15 computers, laptops, "smart" phones and other wireless handheld devices..

16 2. Defendant Pizza Hut, Inc., is, on information and belief, a California
17 corporation having a principal place of business in Plano, Texas. Defendant Pizza Hut of
18 America, Inc., is, on information and belief, a Delaware corporation having a principal place
19 of business in Plano, Texas. On information and belief, Pizza Hut, Inc. and Pizza Hut of
20 America, Inc. are agents and affiliates of one another and knowingly and intentionally acted
21 in concert and under common and coordinated plan, design and control in committing the acts
22 alleged herein, such that each entity is jointly and severally liable for the acts of each other.
23 Pizza Hut, Inc. and Pizza Hut of America, Inc. shall be referred to herein collectively as
24 "Pizza Hut." On information and belief, Pizza Hut makes, uses, sells and/or offers for sale
25 restaurant and foodservice information technology products, software, components and/or
26 systems within this Judicial District, including products, software, components and/or systems
27 comprising wireless and internet Point of Sale ("POS") and/or hospitality aspects.
28

1 3. Defendant Domino's Pizza, LLC, is, on information and belief, a Michigan
2 limited liability company having a principal place of business in Ann Arbor, Michigan.
3 Defendant Domino's Pizza, Inc. is, on information and belief, a Delaware corporation having
4 a principal place of business in Ann Arbor, Michigan. On information and belief, Domino's
5 Pizza, LLC and Domino's Pizza, Inc. are agents and affiliates of one another and knowingly
6 and intentionally acted in concert and under common and coordinated plan, design and
7 control in committing the acts alleged herein, such that each entity is jointly and severally
8 liable for the acts of each other. Domino's Pizza, LLC and Domino's Pizza, Inc. shall be
9 referred to herein collectively as "Domino's." On information and belief, Domino's makes,
10 uses, sells and/or offers for sale restaurant and foodservice information technology products,
11 software, components and/or systems within this Judicial District, including products,
12 software, components and/or systems comprising wireless and internet POS and/or hospitality
13 aspects.

14 4. Defendant Papa John's USA, Inc., ("Papa John's") is, on information and
15 belief, a Kentucky corporation having a principal place of business in Louisville, Kentucky.
16 On information and belief, Papa John's makes, uses, sells and/or offers for sale restaurant and
17 foodservice information technology products, software, components and/or systems within
18 this Judicial District, including products, software, components and/or systems comprising
19 wireless and internet POS and/or hospitality aspects.

20 5. Defendant OpenTable, Inc., ("OpenTable") is, on information and belief, a
21 Delaware corporation having a principal place of business in San Francisco, California. On
22 information and belief, OpenTable makes, uses, sells and/or offers for sale restaurant and
23 foodservice information technology products, software, components and/or systems within
24 this Judicial District, including products, software, components and/or systems comprising
25 wireless and internet hospitality aspects.

26 6. Defendant GrubHub, Inc. ("GrubHub") is, on information and belief, a
27 Delaware corporation having a principal place of business in Chicago, Illinois. On
28 information and belief, GrubHub makes, uses, sells and/or offers for sale restaurant and

1 foodservice information technology products, software, components and/or systems within
2 this Judicial District, including products, software, components and/or systems comprising
3 wireless and internet POS and/or hospitality aspects.

4 7. Defendant Netwaiter, LLC ("Netwaiter") is, on information and belief, a
5 California limited liability company having a principal place of business in Redlands,
6 California. On information and belief, Netwaiter makes, uses, sells and/or offers for sale
7 restaurant and foodservice information technology products, software, components and/or
8 systems within this Judicial District, including products, software, components and/or systems
9 comprising wireless and internet POS and/or hospitality aspects.

10 8. Defendant LaughStub LLC, ("LaughStub") is, on information and belief, a
11 California limited liability company having a principal place of business in Los Angeles,
12 California. On information and belief, LaughStub makes, uses, sells and/or offers for sale
13 entertainment box office management and ticketing information technology products,
14 software, components and/or systems within this Judicial District, including products,
15 software, components and/or systems comprising wireless and internet hospitality aspects.

16 **JURISDICTION AND VENUE**

17 9. This is an action for patent infringement arising under the Patent Laws of the
18 United States, 35 U.S.C. §§ 271, 281-285.

19 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
20 1338(a).

21 11. On information and belief, Defendants, and each of them, have engaged in (a)
22 the offer for sale or license and sale or license of hospitality, restaurant, food service, ticketing
23 and/or entertainment technology services, products and/or components in the United States,
24 including this Judicial District, including services, products, software, components, tickets
25 and/or systems comprising wireless and internet POS and/or hospitality aspects; (b) the
26 installation and maintenance of said services, products, software, components and/or systems
27 in hospitality industry, restaurant, food service, and/or entertainment information technology
28 systems in the United States, including this Judicial District; and/or (c) the use of hospitality

1 industry, restaurant, food service, and/or entertainment information technology systems
2 comprising said services, products, software, components and/or systems in the United States,
3 including this Judicial District.

4 12. This Court has personal jurisdiction over Defendants, and each of them, as
5 each Defendant has committed acts of patent infringement in this Judicial District including,
6 *inter alia*, making, using, offering for sale or license, and/or selling or licensing infringing
7 services, products, software, components and/or systems in this Judicial District.

8 13. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and
9 (c) and 1400(b) as regards all Defendants, both separately and together.

10 **BACKGROUND**

11 14. Ameranth was established in 1996 to develop and provide its 21st Century
12 Communications™ innovative information technology solutions for the hospitality industry
13 (inclusive of e.g. restaurants, hotels, casinos, nightclubs, cruise ships and other entertainment
14 and sports venues). Ameranth has been widely recognized as a technology leader in the
15 provision of wireless and internet-based systems and services to, *inter alia*, restaurants, hotels,
16 casinos, cruise ships and entertainment and sports venues. Ameranth's award winning
17 inventions enable, in relevant part, generation and synchronization of menus, including but
18 not limited to restaurant menus, event tickets, and other products across fixed, wireless and/or
19 internet platforms as well as synchronization of hospitality information and hospitality
20 software applications across fixed, wireless and internet platforms, including but not limited
21 to, computer servers, web servers, databases, affinity/social networking systems, desktop
22 computers, laptops, "smart" phones and other wireless handheld devices.

23 15. Ameranth began development of the inventions leading to the patents-in-suit in
24 the late Summer of 1998, at a time when the then-available wireless and internet hospitality
25 offerings were extremely limited in functionality, were not synchronized and did not provide
26 an integrated system-wide solution to the pervasive ordering, reservations, affinity program
27 and information management needs of the hospitality industry. Ameranth uniquely recognized
28 the actual problems that needed to be resolved in order to meet those needs, and thereafter

1 conceived and developed its breakthrough inventions and products to provide systemic and
2 comprehensive solutions directed to optimally meeting these industry needs. Ameranth has
3 expended considerable effort and resources in inventing, developing and marketing its
4 inventions and protecting its rights therein.

5 16. Ameranth's pioneering inventions have been widely adopted and are thus now
6 essential to the modern wireless hospitality enterprise of the 21st Century. Ameranth's
7 solutions have been adopted, licensed and/or deployed by numerous entities across the
8 hospitality industry.

9 17. The adoption of Ameranth's technology by industry leaders and the wide
10 acclaim received by Ameranth for its technological innovations are just some of the many
11 confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received
12 twelve different technology awards (three with "end customer" partners) and has been widely
13 recognized as a hospitality wireless/internet technology leader by almost all major national
14 and hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA
15 Today and many others. Ameranth was personally nominated by Bill Gates, the Founder of
16 Microsoft, for the prestigious Computerworld Honors Award that Ameranth received in 2001
17 for its breakthrough synchronized reservations/ticketing system with the Improv Comedy
18 Theatres. In his nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
19 information technology for the betterment of mankind." This prestigious award was based on
20 Ameranth's innovative synchronization of wireless/web/fixed hospitality software
21 technology. Subsequently, the United States Patent and Trademark Office granted Ameranth
22 a number of currently-issued patents, two of which are the basis for this lawsuit. Ameranth
23 has issued press releases announcing these patent grants on business wires, on its web sites
24 and at numerous trade shows attended by various of the Defendants since the first of the three
25 presently-asserted patents issued in 2002.

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COUNT I

Patent Infringement (U.S. Pat. No. 6,384,850)

(35 U.S.C. § 271)

18. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-17 above as if fully set forth herein.

19. On May 7, 2002, United States Patent No. 6,384,850 entitled "Information Management and Synchronous Communications System with Menu Generation" ("the '850 patent") (a true and copy of which is attached hereto as **Exhibit A**) was duly and legally issued by the United States Patent & Trademark Office.

20. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in and to the '850 patent.

21. On information and belief, defendant Pizza Hut has infringed one or more valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(a) by making, using, offering for sale or license and/or selling or licensing infringing systems, including but not limited to systems including wireless and internet POS and/or hospitality aspects in the United States without authority or license from Ameranth.

22. On information and belief, defendant Pizza Hut has actively induced others to infringe one or more valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting restaurant and food service users to use infringing systems and services, including but not limited to systems and services including wireless and internet POS and/or hospitality aspects in the United States without authority or license from Ameranth.

23. On information and belief, defendant Pizza Hut has contributorily infringed one or more valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(c) by offering to sell or license and/or selling or licensing components of systems on which valid and enforceable

1 claims of the '850 patent read, constituting a material part of the invention, knowing that the
2 components were especially adapted for use in systems which infringe valid and enforceable
3 claims of the '850 patent, to distributors and/or to restaurant and foodservice users for use in
4 infringing systems and services, including but not limited to systems and services including
5 wireless and internet POS and/or hospitality aspects in the United States without authority or
6 license from Ameranth.

7 24. On information and belief, the infringement of defendant Pizza Hut has been
8 done with knowledge and willful disregard of Ameranth's patent rights, making this an
9 exceptional case within the meaning of 35 U.S.C. §285.

10 25. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
11 including loss of profits from sales it would have made but for the infringements. Unless
12 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
13 Ameranth for which there is no adequate remedy at law.

14 26. On information and belief, defendant Domino's has infringed one or more
15 valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through
16 16 of the '850 patent, in violation of 35 U.S.C. §271(a) by making, using, offering for sale or
17 license and/or selling or licensing infringing systems including but not limited to systems
18 including wireless and internet POS and/or hospitality aspects in the United States without
19 authority or license from Ameranth.

20 27. On information and belief, defendant Domino's has actively induced others to
21 infringe one or more valid and enforceable claims of the '850 patent, specifically one or more
22 of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(b) by knowingly
23 encouraging, aiding and abetting restaurant and food service users to use infringing systems
24 and services, including but not limited to systems and services including wireless and internet
25 POS and/or hospitality aspects in the United States without authority or license from
26 Ameranth.

27 28. On information and belief, defendant Domino's has contributorily infringed
28 one or more valid and enforceable claims of the '850 patent, specifically one or more of

1 claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(c) by offering to sell or
2 license and/or selling or licensing components of systems on which valid and enforceable
3 claims of the '850 patent read, constituting a material part of the invention, knowing that the
4 components were especially adapted for use in systems which infringe valid and enforceable
5 claims of the '850 patent, to distributors and/or to restaurant and foodservice users for use in
6 infringing systems and services, including but not limited to systems and services including
7 wireless and internet POS and/or hospitality aspects in the United States without authority or
8 license from Ameranth.

9 29. On information and belief, the infringement of defendant Domino's has been
10 done with knowledge and willful disregard of Ameranth's patent rights, making this an
11 exceptional case within the meaning of 35 U.S.C. §285.

12 30. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
13 including loss of profits from sales it would have made but for the infringements. Unless
14 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
15 Ameranth for which there is no adequate remedy at law.

16 31. On information and belief, defendant Papa John's has infringed one or more
17 valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through
18 16 of the '850 patent, in violation of 35 U.S.C. §271(a) by making, using, offering for sale or
19 license and/or selling or licensing infringing systems, including but not limited to systems
20 including wireless and internet POS and/or hospitality aspects in the United States without
21 authority or license from Ameranth.

22 32. On information and belief, defendant Papa John's has actively induced others
23 to infringe one or more valid and enforceable claims of the '850 patent, specifically one or
24 more of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(b) by
25 knowingly encouraging, aiding and abetting restaurant and food service users to use
26 infringing systems and services, including but not limited to systems and services including
27 wireless and internet POS and/or hospitality aspects in the United States without authority or
28 license from Ameranth.

1 33. On information and belief, defendant Papa John's has contributorily infringed
2 one or more valid and enforceable claims of the '850 patent, specifically one or more of
3 claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(c) by offering to sell or
4 license and/or selling or licensing components of systems on which valid and enforceable
5 claims of the '850 patent read, constituting a material part of the invention, knowing that the
6 components were especially adapted for use in systems which infringe valid and enforceable
7 claims of the '850 patent, to distributors and/or to restaurant and foodservice users for use in
8 infringing systems and services, including but not limited to systems and services including
9 wireless and internet POS and/or hospitality aspects in the United States without authority or
10 license from Ameranth.

11 34. On information and belief, the infringement of defendant Papa John's has been
12 done with knowledge and willful disregard of Ameranth's patent rights, making this an
13 exceptional case within the meaning of 35 U.S.C. §285.

14 35. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
15 including loss of profits from sales it would have made but for the infringements. Unless
16 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
17 Ameranth for which there is no adequate remedy at law.

18 36. On information and belief, defendant OpenTable has infringed one or more
19 valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through
20 16 of the '850 patent, in violation of 35 U.S.C. §271(a) by making, using, offering for sale or
21 license and/or selling or licensing infringing systems, including but not limited to systems
22 including wireless and internet hospitality aspects in the United States without authority or
23 license from Ameranth.

24 37. On information and belief, defendant OpenTable has actively induced others to
25 infringe one or more valid and enforceable claims of the '850 patent, specifically one or more
26 of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(b) by knowingly
27 encouraging, aiding and abetting restaurant and food service users to use infringing systems
28

1 and services, including but not limited to systems and services including wireless and internet
2 hospitality aspects in the United States without authority or license from Ameranth.

3 38. On information and belief, defendant OpenTable has contributorily infringed
4 one or more valid and enforceable claims of the '850 patent, specifically one or more of
5 claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(c) by offering to sell or
6 license and/or selling or licensing components of systems on which valid and enforceable
7 claims of the '850 patent read, constituting a material part of the invention, knowing that the
8 components were especially adapted for use in systems which infringe valid and enforceable
9 claims of the '850 patent, to distributors and/or to restaurant and foodservice users for use in
10 infringing systems and services including but not limited to systems and services including
11 wireless and internet hospitality aspects in the United States without authority or license
12 from Ameranth.

13 39. On information and belief, the infringement of defendant OpenTable has been
14 done with knowledge and willful disregard of Ameranth's patent rights, making this an
15 exceptional case within the meaning of 35 U.S.C. §285.

16 40. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
17 including loss of profits from sales it would have made but for the infringements. Unless
18 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
19 Ameranth for which there is no adequate remedy at law.

20 41. On information and belief, defendant GrubHub has infringed one or more valid
21 and enforceable claims of the '850 patent, specifically one or more of claims 5 through 16 of
22 the '850 patent, in violation of 35 U.S.C. §271(a) by making, using, offering for sale or
23 license and/or selling or licensing infringing systems, including but not limited to systems
24 including wireless and internet POS and/or hospitality aspects in the United States without
25 authority or license from Ameranth.

26 42. On information and belief, defendant GrubHub has actively induced others to
27 infringe one or more valid and enforceable claims of the '850 patent, specifically one or more
28 of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(b) by knowingly

1 encouraging, aiding and abetting restaurant and food service users to use infringing systems
2 and services, including but not limited to systems and services including wireless and internet
3 POS and/or hospitality aspects in the United States without authority or license from
4 Ameranth.

5 43. On information and belief, defendant GrubHub has contributorily infringed
6 one or more valid and enforceable claims of the '850 patent, specifically one or more of
7 claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(c) by offering to sell or
8 license and/or selling or licensing components of systems on which valid and enforceable
9 claims of the '850 patent read, constituting a material part of the invention, knowing that the
10 components were especially adapted for use in systems which infringe valid and enforceable
11 claims of the '850 patent, to distributors and/or to restaurant and foodservice users for use in
12 infringing systems and services, including but not limited to systems and services including
13 wireless and internet POS and/or hospitality aspects in the United States without authority or
14 license from Ameranth.

15 44. On information and belief, the infringement of defendant GrubHub has been
16 done with knowledge and willful disregard of Ameranth's patent rights, making this an
17 exceptional case within the meaning of 35 U.S.C. §285.

18 45. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
19 including loss of profits from sales it would have made but for the infringements. Unless
20 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
21 Ameranth for which there is no adequate remedy at law.

22 46. On information and belief, defendant Netwaiter has infringed one or more
23 valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through
24 16 of the '850 patent, in violation of 35 U.S.C. §271(a) by making, using, offering for sale or
25 license and/or selling or licensing infringing systems, including but not limited to systems
26 including wireless and internet POS and/or hospitality aspects in the United States without
27 authority or license from Ameranth.

1 47. On information and belief, defendant Netwaiter has actively induced others to
2 infringe one or more valid and enforceable claims of the '850 patent, specifically one or more
3 of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(b) by knowingly
4 encouraging, aiding and abetting restaurant and food service users to use infringing systems
5 and services, including but not limited to systems and services including wireless and internet
6 POS and/or hospitality aspects in the United States without authority or license from
7 Ameranth.

8 48. On information and belief, defendant Netwaiter has contributorily infringed
9 one or more valid and enforceable claims of the '850 patent, specifically one or more of
10 claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(c) by offering to sell or
11 license and/or selling or licensing components of systems on which valid and enforceable
12 claims of the '850 patent read, constituting a material part of the invention, knowing that the
13 components were especially adapted for use in systems which infringe valid and enforceable
14 claims of the '850 patent, to distributors and/or to restaurant and foodservice users for use in
15 infringing systems and services, including but not limited to systems and services including
16 wireless and internet POS and/or hospitality aspects in the United States without authority or
17 license from Ameranth.

18 49. On information and belief, the infringement of defendant Netwaiter has been
19 done with knowledge and willful disregard of Ameranth's patent rights, making this an
20 exceptional case within the meaning of 35 U.S.C. §285.

21 50. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
22 including loss of profits from sales it would have made but for the infringements. Unless
23 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
24 Ameranth for which there is no adequate remedy at law.

25 51. On information and belief, defendant LaughStub has infringed one or more
26 valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through
27 16 of the '850 patent, in violation of 35 U.S.C. §271(a) by making, using, offering for sale or
28 license and/or selling or licensing infringing systems, including but not limited to systems

1 including wireless and internet hospitality aspects in the United States without authority or
2 license from Ameranth.

3 52. On information and belief, defendant LaughStub has actively induced others to
4 infringe one or more valid and enforceable claims of the '850 patent, specifically one or more
5 of claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(b) by knowingly
6 encouraging, aiding and abetting entertainment venue users to use infringing ticketing and
7 box office management systems and services, including but not limited to systems and
8 services including wireless and internet hospitality aspects in the United States without
9 authority or license from Ameranth.

10 53. On information and belief, defendant LaughStub has contributorily infringed
11 one or more valid and enforceable claims of the '850 patent, specifically one or more of
12 claims 5 through 16 of the '850 patent, in violation of 35 U.S.C. §271(c) by offering to sell or
13 license and/or selling or licensing components of systems on which valid and enforceable
14 claims of the '850 patent read, constituting a material part of the invention, knowing that the
15 components were especially adapted for use in systems which infringe valid and enforceable
16 claims of the '850 patent, to distributors and/or to entertainment venue users for use in
17 infringing ticketing and box office management systems and services, including but not
18 limited to systems and services including wireless and internet hospitality aspects in the
19 United States without authority or license from Ameranth.

20 54. On information and belief, the infringement of defendant LaughStub has been
21 done with knowledge and willful disregard of Ameranth's patent rights, making this an
22 exceptional case within the meaning of 35 U.S.C. §285.

23 55. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
24 including loss of profits from sales it would have made but for the infringements. Unless
25 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
26 Ameranth for which there is no adequate remedy at law.

27 ///

28

COUNT II

Patent Infringement (U.S. Pat. No. 6,871,325)

(35 U.S.C. § 271)

56. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-18 above as if fully set forth herein.

57. On March 22, 2005, United States Patent No. 6,871,325 entitled "Information Management and Synchronous Communications System with Menu Generation" ("the '325 patent") (a true and correct copy of which is attached hereto as **Exhibit B**) was duly and legally issued by the United States Patent & Trademark Office.

58. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in and to the '325 patent.

59. On information and belief, defendant Pizza Hut has infringed one or more valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(a) by making, using, offering for sale or license and/or selling or licensing infringing systems, including but not limited to systems including wireless and internet POS and/or hospitality aspects in the United States without authority or license from Ameranth.

60. On information and belief, defendant Pizza Hut has actively induced others to one or more valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting restaurant and food service users to use infringing systems and services, including but not limited to systems and services including wireless and internet POS and/or hospitality aspects in the United States without authority or license from Ameranth.

61. On information and belief, defendant Pizza Hut has contributorily infringed one or more valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(c) by offering to sell or license and/or selling or licensing components of systems

1 on which valid and enforceable claims of the '325 patent read, constituting a material part of
2 the invention, knowing that the components were especially adapted for use in systems which
3 infringe valid and enforceable claims of the '325 patent, to distributors and/or to restaurant
4 and foodservice users for use in infringing systems and services, including but not limited to
5 systems and services including wireless and internet POS and/or hospitality aspects in the
6 United States without authority or license from Ameranth.

7 62. On information and belief, the infringement of defendant Pizza Hut has been
8 done with knowledge and willful disregard of Ameranth's patent rights, making this an
9 exceptional case within the meaning of 35 U.S.C. §285.

10 63. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
11 including loss of profits from sales it would have made but for the infringements. Unless
12 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
13 Ameranth for which there is no adequate remedy at law.

14 64. On information and belief, defendant Domino's has infringed one or more
15 valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through
16 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(a) by
17 making, using, offering for sale or license and/or selling or licensing infringing systems,
18 including but not limited to systems including wireless and internet POS and/or hospitality
19 aspects in the United States without authority or license from Ameranth.

20 65. On information and belief, defendant Domino's has actively induced others to
21 infringe one or more valid and enforceable claims of the '325 patent, specifically one or more
22 of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
23 U.S.C. §271(b) by knowingly encouraging, aiding and abetting restaurant and food service
24 users to use infringing systems and services, including but not limited to systems and services
25 including wireless and internet POS and/or hospitality aspects in the United States without
26 authority or license from Ameranth.

27 66. On information and belief, defendant Domino's has contributorily infringed
28 one or more valid and enforceable claims of the '325 patent, specifically one or more of

1 claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
2 U.S.C. §271(c) by offering to sell or license and/or selling or licensing components of systems
3 on which valid and enforceable claims of the '325 patent read, constituting a material part of
4 the invention, knowing that the components were especially adapted for use in systems which
5 infringe valid and enforceable claims of the '325 patent, to distributors and/or to restaurant
6 and foodservice users for use in infringing systems and services, including but not limited to
7 systems and services including wireless and internet POS and/or hospitality aspects in the
8 United States without authority or license from Ameranth.

9 67. On information and belief, the infringement of defendant Domino's has been
10 done with knowledge and willful disregard of Ameranth's patent rights, making this an
11 exceptional case within the meaning of 35 U.S.C. §285.

12 68. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
13 including loss of profits from sales it would have made but for the infringements. Unless
14 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
15 Ameranth for which there is no adequate remedy at law.

16 69. On information and belief, defendant Papa John's has infringed one or more
17 valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through
18 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(a) by
19 making, using, offering for sale or license and/or selling or licensing infringing systems,
20 including but not limited to systems including wireless and internet POS and/or hospitality
21 aspects in the United States without authority or license from Ameranth.

22 70. On information and belief, defendant Papa John's has actively induced others
23 to infringe one or more valid and enforceable claims of the '325 patent, specifically one or
24 more of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of
25 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting restaurant and food service
26 users to use infringing systems and services, including but not limited to systems and services
27 including wireless and internet POS and/or hospitality aspects in the United States without
28 authority or license from Ameranth.

1 71. On information and belief, defendant Papa John's has contributorily infringed
2 one or more valid and enforceable claims of the '325 patent, specifically one or more of
3 claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
4 U.S.C. §271(c) by offering to sell or license and/or selling or licensing components of systems
5 on which valid and enforceable claims of the '325 patent read, constituting a material part of
6 the invention, knowing that the components were especially adapted for use in systems which
7 infringe valid and enforceable claims of the '325 patent, to distributors and/or to restaurant
8 and foodservice users for use in infringing systems and services, including but not limited to
9 systems and services including wireless and internet POS and/or hospitality aspects in the
10 United States without authority or license from Ameranth.

11 72. On information and belief, the infringement of defendant Papa John's has been
12 done with knowledge and willful disregard of Ameranth's patent rights, making this an
13 exceptional case within the meaning of 35 U.S.C. §285.

14 73. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
15 including loss of profits from sales it would have made but for the infringements. Unless
16 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
17 Ameranth for which there is no adequate remedy at law.

18 74. On information and belief, defendant OpenTable has infringed one or more
19 valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through
20 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(a) by
21 making, using, offering for sale or license and/or selling or licensing infringing systems,
22 including but not limited to systems including wireless and internet hospitality aspects in the
23 United States without authority or license from Ameranth.

24 75. On information and belief, defendant OpenTable has actively induced others to
25 infringe one or more valid and enforceable claims of the '325 patent, specifically one or more
26 of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
27 U.S.C. §271(b) by knowingly encouraging, aiding and abetting restaurant and food service
28 users to use infringing systems and services, including but not limited to systems and services

1 including wireless and internet hospitality aspects in the United States without authority or
2 license from Ameranth.

3 76. On information and belief, defendant OpenTable has contributorily infringed
4 one or more valid and enforceable claims of the '325 patent, specifically one or more of
5 claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
6 U.S.C. §271(c) by offering to sell or license and/or selling or licensing components of systems
7 on which valid and enforceable claims of the '325 patent read, constituting a material part of
8 the invention, knowing that the components were especially adapted for use in systems which
9 infringe valid and enforceable claims of the '325 patent, to distributors and/or to restaurant
10 and foodservice users for use in infringing systems and services, including but not limited to
11 systems and services including wireless and internet hospitality aspects in the United States
12 without authority or license from Ameranth.

13 77. On information and belief, the infringement of defendant OpenTable has been
14 done with knowledge and willful disregard of Ameranth's patent rights, making this an
15 exceptional case within the meaning of 35 U.S.C. §285.

16 78. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
17 including loss of profits from sales it would have made but for the infringements. Unless
18 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
19 Ameranth for which there is no adequate remedy at law.

20 79. On information and belief, defendant GrubHub has infringed one or more valid
21 and enforceable claims of the '325 patent, specifically one or more of claims 2 through 5, 7
22 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(a) by making,
23 using, offering for sale or license and/or selling or licensing infringing systems, including but
24 not limited to systems including wireless and internet POS and/or hospitality aspects in the
25 United States without authority or license from Ameranth.

26 80. On information and belief, defendant GrubHub has actively induced others to
27 infringe one or more valid and enforceable claims of the '325 patent, specifically one or more
28 of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35

1 U.S.C. §271(b) by knowingly encouraging, aiding and abetting restaurant and food service
2 users to use infringing systems and services including but not limited to systems and services,
3 including wireless and internet POS and/or hospitality aspects in the United States without
4 authority or license from Ameranth.

5 81. On information and belief, defendant GrubHub has contributorily infringed
6 one or more valid and enforceable claims of the '325 patent, specifically one or more of
7 claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
8 U.S.C. §271(c) by offering to sell or license and/or selling or licensing components of systems
9 on which valid and enforceable claims of the '325 patent read, constituting a material part of
10 the invention, knowing that the components were especially adapted for use in systems which
11 infringe valid and enforceable claims of the '325 patent, to distributors and/or to restaurant
12 and foodservice users for use in infringing systems and services, including but not limited to
13 systems and services including wireless and internet POS and/or hospitality aspects in the
14 United States without authority or license from Ameranth.

15 82. On information and belief, the infringement of defendant GrubHub has been
16 done with knowledge and willful disregard of Ameranth's patent rights, making this an
17 exceptional case within the meaning of 35 U.S.C. §285.

18 83. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
19 including loss of profits from sales it would have made but for the infringements. Unless
20 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
21 Ameranth for which there is no adequate remedy at law.

22 84. On information and belief, defendant Netwaiter has infringed one or more
23 valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through
24 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(a) by
25 making, using, offering for sale or license and/or selling or licensing infringing systems,
26 including but not limited to systems including wireless and internet POS and/or hospitality
27 aspects in the United States without authority or license from Ameranth.

28

1 85. On information and belief, defendant Netwaiter has actively induced others to
2 infringe one or more valid and enforceable claims of the '325 patent, specifically one or more
3 of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
4 U.S.C. §271(b) by knowingly encouraging, aiding and abetting restaurant and food service
5 users to use infringing systems and services, including but not limited to systems and services
6 including wireless and internet POS and/or hospitality aspects in the United States without
7 authority or license from Ameranth.

8 86. On information and belief, defendant Netwaiter has contributorily infringed
9 one or more valid and enforceable claims of the '325 patent, specifically one or more of
10 claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
11 U.S.C. §271(c) by offering to sell or license and/or selling or licensing components of systems
12 on which valid and enforceable claims of the '325 patent read, constituting a material part of
13 the invention, knowing that the components were especially adapted for use in systems which
14 infringe valid and enforceable claims of the '325 patent, to distributors and/or to restaurant
15 and foodservice users for use in infringing systems and services, including but not limited to
16 systems and services including wireless and internet POS and/or hospitality aspects in the
17 United States without authority or license from Ameranth.

18 87. On information and belief, the infringement of defendant Netwaiter has been
19 done with knowledge and willful disregard of Ameranth's patent rights, making this an
20 exceptional case within the meaning of 35 U.S.C. §285.

21 88. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
22 including loss of profits from sales it would have made but for the infringements. Unless
23 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
24 Ameranth for which there is no adequate remedy at law.

25 89. On information and belief, defendant LaughStub has infringed one or more
26 valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through
27 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35 U.S.C. §271(a) by
28 making, using, offering for sale or license and/or selling or licensing infringing systems,

1 including but not limited to systems including wireless and internet hospitality aspects in the
2 United States without authority or license from Ameranth.

3 90. On information and belief, defendant LaughStub has actively induced others to
4 infringe one or more valid and enforceable claims of the '325 patent, specifically one or more
5 of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
6 U.S.C. §271(b) by knowingly encouraging, aiding and abetting entertainment venue users to
7 use infringing ticketing and box office management systems and services, including but not
8 limited to systems and services including wireless and internet hospitality aspects in the
9 United States without authority or license from Ameranth.

10 91. On information and belief, defendant LaughStub has contributorily infringed
11 one or more valid and enforceable claims of the '325 patent, specifically one or more of
12 claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent, in violation of 35
13 U.S.C. §271(c) by offering to sell or license and/or selling or licensing components of systems
14 on which valid and enforceable claims of the '325 patent read, constituting a material part of
15 the invention, knowing that the components were especially adapted for use in systems which
16 infringe valid and enforceable claims of the '325 patent, to distributors and/or to
17 entertainment venue users for use in infringing ticketing and box office management systems
18 and services including but not limited to systems and services, including wireless and internet
19 hospitality aspects in the United States without authority or license from Ameranth.

20 92. On information and belief, the infringement of defendant LaughStub has been
21 done with knowledge and willful disregard of Ameranth's patent rights, making this an
22 exceptional case within the meaning of 35 U.S.C. §285.

23 93. The aforesaid infringing activity has caused damage to plaintiff Ameranth,
24 including loss of profits from sales it would have made but for the infringements. Unless
25 enjoined, the aforesaid infringing activity will continue and cause irreparable injury to
26 Ameranth for which there is no adequate remedy at law.

27 ///

28

PRAYER FOR RELIEF

WHEREFORE, plaintiff Ameranth respectfully prays for judgment against Defendants, and each of them, as follows:

1. Adjudging that the manufacture, use, offer for sale or license and /or sale or license of each of the Defendants' accused products, services, software and/or hardware infringes valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through 16 of the '850 patent, and valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent;

2. Adjudging that each of the Defendants has infringed, actively induced others to infringe and/or contributorily infringed valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through 16 of the '850 patent, and valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent;

3. Adjudging that each of the Defendants has infringed, actively induced others to infringe and/or contributorily infringed valid and enforceable claims of the '850 patent, specifically one or more of claims 5 through 16 of the '850 patent, and valid and enforceable claims of the '325 patent, specifically one or more of claims 2 through 5, 7 through 8, and 11 through 15 of the '325 patent;

4. Adjudging that Defendants' infringement of the valid and enforceable claims of the '850 and '325 patents has been knowing and willful;

5. Enjoining each of the Defendants, and their respective officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates and all other persons acting in concert, participation or privity with them, and their successors and assigns, from infringing, contributorily infringing and/or inducing others to infringe the valid and enforceable claims of the '850 and '325 patents;

6. Awarding Ameranth the damages it has sustained by reason of Defendants' infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

10. Awarding to Ameranth such other and further relief that this Court may deem just and proper.

Ameranth demands trial by jury of its claims set forth herein to the maximum extent permitted by law.

MAZZARELLA ■ CALDARELLI LLP

Attorneys for Plaintiff Ameranth, Inc.

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Ameranth, Inc.

DEFENDANTS

Pizza Hut, Inc., Pizza Hut of America, Inc., Domino's Pizza, LLC, Domino's Pizza, Inc., Papa John's USA, Inc., OpenTable, Inc., GrubHub, Inc., Netwaiter, LLC, LaughStub LLC

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm) Name, Address, and Telephone Number

Mazzarella Caldarelli LLP
550 West C Street
Suite 700
San Diego, CA 92101
(619) 238-4900

'11CV1810 JLS NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	PERSONAL PROPERTY	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	IMMIGRATION	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutional of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities Employment			
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities Other			
	<input type="checkbox"/> 440 Other Civil Rights			
	PRISONER PETITIONS			
	<input type="checkbox"/> 510 Motion to Vacate Sentence			
	Habeas Corpus:			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Judge from District Appeal to District

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 U.S.C. sections 271, 281-85

Brief description of cause:
Patent Infringement

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

☒ CHECK YES only if demanded in complaint:JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

August 15, 2011

SIGNATURE OF ATTORNEY OF RECORD

/s William J. Caldarelli

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CSDJS44

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.